

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NICE SYSTEMS, INC. and
NICE SYSTEMS LTD.,

*Plaintiffs and Counterclaim
Defendants,*

v.

WITNESS SYSTEMS, INC.,

*Defendant and Counterclaim
Plaintiff.*

C.A. No. 06-311-JJF

**WITNESS SYSTEMS, INC.’S NUNC PRO TUNC MOTION FOR
LEAVE TO FILE ITS SECOND AMENDED ANSWER,
DEFENSES, AND COUNTERCLAIMS**

Defendant Witness Systems, Inc. (“Witness Systems”) hereby respectfully moves the Court to enter an Order (1) granting Witness Systems leave to amend its First Amended Answer, Defenses, and Counterclaims to Plaintiffs’ Complaint and (2) deeming Witness Systems’ Second Amended Answer, Defenses, and Counterclaims (attached hereto as Exhibit “A”) filed and served as of the date the Court enters its Order. Witness Systems understands that Plaintiffs NICE Systems Ltd. and NICE Systems, Inc. (collectively, “NICE”) plan to oppose this Motion. This Motion was initially filed within the February 7, 2007 deadline set by paragraph 5 of the Rule 16 Scheduling Order for motions to amend the pleadings. The Court struck that filing for failure to comply with its standing order regarding the procedure for filing motions in patent cases. Witness Systems understood the standing order to apply only to discovery disputes and thus, failed to file an accompanying notice of motion. Accordingly, Witness Systems requests that the Court accept this filing Nunc Pro Tunc to February 7, 2007.

Dated: February 16, 2007

FISH & RICHARDSON P.C.

By: /s/ Kyle Wagner Compton

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Attorneys for Defendant
Witness Systems, Inc.

LOCAL RULE 7.1.1 CERTIFICATION

Pursuant to D. Del. Local Rule 7.1.1, Defendant Witness Systems, Inc. (“Witness Systems”) certifies that it has sought the consent of Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd. (collectively, “NICE”) to file its NUNC PRO TUNC MOTION FOR LEAVE TO FILE ITS SECOND AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS as an unopposed motion, and that NICE informed Witness Systems that NICE plans on opposing this Motion.

/s/ Kyle Wagner Compton

Kyle Wagner Compton (#4693)

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2007, I electronically filed with the Clerk of Court "WITNESS SYSTEMS, INC.'S NUNC PRO TUNC MOTION FOR LEAVE TO FILE ITS SECOND AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS" using CM/ECF which will send notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery to:

Josy W. Ingersoll
Melanie K. Sharp
Karen E. Keller
Young, Conoway, Stargatt & Taylor, LLP
1000 West Street, 17th Floor
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Wilmington, DE 19899

Attorneys for Plaintiffs
Nice Systems Ltd. and Nice Systems, Inc.

I hereby certify that on February 16, 2007, I have emailed and sent via United States Postal Service, the document(s) to the following non-registered participants:

Scott G. Lindvall
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Joseph M. Drayton
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Nice Systems Ltd. and Nice Systems, Inc.

/s/ Kyle Wagner Compton
Kyle Wagner Compton

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**ORDER GRANTING DEFENDANT AND COUNTERCLAIM PLAINTIFF
WITNESS SYSTEMS, INC.'S NUNC PRO TUNC MOTION FOR LEAVE TO FILE
ITS SECOND AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS**

Having considered Witness Systems, Inc.'s Motion for Leave to File Its Second Amended Answer, Defenses, and Counterclaims, IT IS HEREBY ORDERED that 1) the Motion is deemed to have been filed on February 7, 2007, and 2) the Motion is granted and Witness Systems, Inc.'s Second Amended Answer, Defenses, and Counterclaims is deemed filed and served on this date.

This _____ day of February, 2007.

Joseph J. Farnan, Jr.
United States District Judge